



California Regional Water Quality Control Board

San Diego Region



Terry Tamminen
Secretary for
Environmental
Protection

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.swrcb.ca.gov/rwqcb9>

Arnold Schwarzenegger
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, visit our website.

November 9, 2004

Mr. James McCann
JRMCM Real Estate, Inc.
1040 S. Andreasen Drive, Suite 200
Escondido, CA 92029

CERTIFIED MAIL
7004 0750 0000 7625 2160

In reply refer to: **WPN:10-3020081.02:becke**

Dear: Mr. McCann:

SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2004-0420 FOR DISCHARGE OF WASTE TO ESCONDIDO CREEK IN VIOLATION OF CONSTRUCTION STORM WATER ORDER NO. 99-08-DWQ, JRMCM REAL ESTATE, INC., ESCONDIDO RESEARCH AND TECHNOLOGY CENTER, ANDREASEN DRIVE, ESCONDIDO, SAN DIEGO COUNTY

Enclosed is California Regional Water Quality Control Board, San Diego Region (Regional Board) Cleanup and Abatement Order (CAO) No. R9-2004-0420. This order addresses the illegal discharge of waste into Escondido Creek from the Escondido Research and Technology Center construction project between Harmony Grove Road and Vineyard in the City of Escondido.

The CAO is issued pursuant to California Water Code (CWC) section 13304 and directs you to cleanup and abate the effects of these wastes. Please note the deadlines contained within the CAO. Failure to meet the deadlines may subject you to further enforcement action by the Regional Board, including administrative or judicial proceedings for the assessment of civil liability in amounts of up to \$10,000.00 per day; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

Pursuant to CWC section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required, by this Order. To date, the Regional Board has incurred costs of \$6,255.00 in investigating the discharge of waste. Please promptly submit a check to the Regional Board, at the above address, in the amount of \$6,255.00, payable to the State Water Resources Control Board Cleanup and Abatement Account.

Please be aware that you may receive future invoices for additional cost incurred by the Regional Board in overseeing implementation of the requirements of this order.

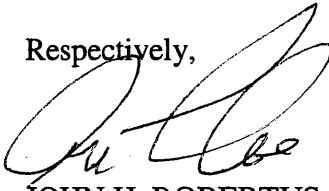
California Environmental Protection Agency

You may contest the issuance of this CAO by requesting a public hearing on the matter before the Regional Board within 30 days of the issue date. However, in order to request a public hearing for the next scheduled meeting of the Regional Board on December 8, 2004, this office must receive a written request no later than 5 PM on November 18, 2004. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

I strongly urge a complete and prompt response to each directive in CAO No. R9-2004-0420. If you have any questions regarding this matter, please contact Eric Becker at 858-492-1785.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectively,


JOHN H. ROBERTUS
Executive Officer
San Diego Regional Water Quality Control Board

JHR:rwm:esb

Enclosures: (1) Cleanup and Abatement Order No. R9-2004-0420
(2) Summary of Regional Board costs

CC: Patrick Thomas
Public Works Director
City of Escondido
201 North Broadway
Escondido, CA 92025

Cheryl Filar
City of Escondido
201 North Broadway
Escondido, CA 92025

Homi Nomdari
City of Escondido
201 N. Broadway
Escondido, CA 92025

Dan Higbee
City of Escondido
201 N. Broadway
Escondido, CA 92025

Joe Fogarty
JRMCM Real Estate, Inc.
1040 S. Andreas Drive, Suite 200
Escondido, CA 92029

Chris Wood
Lusardi Construction Company
1570 Linda Vista Drive
San Marcos, CA 92078

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**CLEANUP AND ABATEMENT ORDER NO. R9-2004-0420
FOR**

**JAMES McCANN
JPMC REAL ESTATE, INC.
JRM HOLDINGS INC
JRM ERTC I, L.P.
Escondido Research and Technology Center
Escondido, San Diego County**

The California Regional Water Quality Control Board, San Diego Region (hereinafter SDRWQCB), finds that:

1. James McCann, JPMC Real Estate, Inc., JRM Holdings Inc., JRM ERTC I, L.P. (hereinafter *dischargers*) owns and operates the Escondido Research and Technology Center (ERTC) construction project, located between Harmony Grove Road and Vineyard within the City of Escondido.
2. Storm water runoff from the ERTC site discharges to the City of Escondido Municipal Separate Storm Sewer System (MS4), which discharges to Escondido Creek less than 1-mile from the project. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*. The *dischargers* have coverage under Order No. 99-08-DWQ with WDID No. 937C320081 and have a Storm Water Pollution Prevention Plan.
3. The ERTC site is located in the Escondido Creek Hydrologic Area (904.60) of the Carlsbad Hydrologic Unit (904.00) as described in the *Water Quality Control Plan, San Diego Basin (9), 1994* (hereafter Basin Plan). The Basin Plan designates the beneficial uses of Escondido Creek as Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
4. Escondido Creek is a tributary to San Elijo Lagoon, which is designated by the SWRCB as a Clean Water Act Section 303(d) Impaired Waters for sedimentation/siltation.
5. On February 22, 2003 and October 18, 20, and 27, 2004, the *dischargers* had discharged sediment and sediment-laden water into the City of Escondido MS4, Escondido Creek, and San Elijo Lagoon in violation of Order No. 99-08-DWQ. These discharges have caused or threaten to cause a condition of pollution or nuisance and threaten to impair the beneficial uses of Escondido Creek and San Elijo Lagoon.

6. As of October 1, 2004, the *dischargers* violated Order No. 99-08-DWQ by not implementing Best Management Practices (BMPs) on portions of the site, by implementing inadequate BMPs including spray applied erosion control on other portions of the site, and by not adequately maintaining BMPs designed to control and reduce sediment discharges from the ERTC site during rain events to the Best Available Technology Standard.
7. The *dischargers* have discharged and threaten to continue discharging sediment and sediment-laden water in violation of the Basin Plan's Waste Discharge Prohibitions Nos. 1 and 14 by:
 - a. Discharging waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050; and
 - b. Discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters.
8. Unless the *dischargers* immediately implement an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance in Escondido Creek and exacerbating the sediment impairment conditions in San Elijo Lagoon.
9. Water quality monitoring of the storm water runoff is necessary to quantify the volume of sediment loading discharging from the site and to evaluate the effectiveness of the BMPs implemented on the project.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.
12. **IT IS HEREBY ORDERED** that, pursuant to Section 13304 and 13267 of Division 7 of the California Water Code, James McCann, JRMC Real Estate, Inc., JRM Holdings Inc., JRM ERTC I, L.P. (hereinafter *dischargers*) shall:
 1. Immediately initiate efforts to abate the potential effects of threatened discharges of wastes into Escondido Creek and San Elijo Lagoon and take remedial action to cease discharging waste in violation of Order 99-08-DWQ and the Basin Plan.

2. The *dischargers* shall immediately comply with all requirements of the State Board Construction Storm Water Permit No. 99-08-DWQ, by providing an effective and appropriate combination of sediment and erosion controls on all disturbed areas. Measures shall include, but not limited to, the following:
 - a. The use of erosion control blankets or their equivalent on slopes to address the failure of past erosion control measures, and
 - b. The removal of sediment from basins to maintain its capacity, and
 - c. The installation of BMPs to eliminate the tracking of sediment onto public or private roads, and
 - d. The implementation of a comprehensive maintenance program to ensure continued BMP effectiveness.
3. **By November 30, 2004**, the *dishargers* shall submit a technical report documenting that the tasks in Directive 2 have been completed.
4. **By November 19, 2004**, the *dischargers* shall initiate a water quality monitoring plan that shall be continued until the *dischargers* demonstrate that the BMPs are effective in reducing sediment discharges from the ERTC site during rain events to the Best Available Technology Standard.

Samples shall be collected during the first two hours and after every significant rainfall event (where storm water runoff discharges from the project). The plan shall include, but not be limited to:

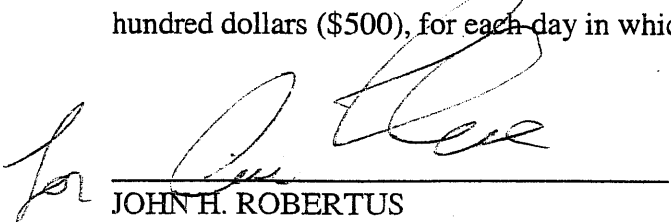
- a. At a minimum, grab samples shall be collected at discharge points to Vineyard Street, Enterprise Street, Andreasen Drive, Harmony Grove Road, Enterprise Street, and Allenwood Lane.
 - b. Samples shall be analyzed for Total Suspended Solids, Settleable Solids, Suspended Sediment Concentration, and Turbidity using appropriate analytical methods.
5. After each significant rainfall event, the *dischargers* shall conduct an immediate assessment of erosion and sediment control BMPs implemented on the project: This assessment shall:
 - a. Identify the source of the silt and sediment.
 - b. Repair or replace any BMP that has failed.
 - c. Maintain any BMP that is not functioning properly due to lack of maintenance.
 - d. Evaluate whether additional or alternative BMPs should be implemented to prevent further discharges of sediment.
 6. After each significant rainfall event, the *dischargers* shall submit a status report within 7 days, documenting the subject site's compliance with the General Construction Storm Water Permit and efforts to prevent further discharges and violations of the Basin Plan. Reports shall be submitted until the *dischargers*

demonstrate that the BMPs are effective in reducing sediment discharges from the ERTC site during rain events to the Best Available Technology Standard. The reports shall include and are not limited to:

- a. Photo documentation of BMPs.
 - b. A narrative description of all actions, BMPs, inspections, and maintenance conducted at the subject site during the reporting period.
 - c. A description of all discharges during the reporting period including photos, estimated amount discharged, measures to prevent similar discharges and a plan to cleanup the discharge.
 - d. Water Quality monitoring data and analysis.
 - e. Site maps showing final slopes, temporary slopes, drainages, and BMP placement for the reporting period
 - f. Photocopies of all subject site inspections reports.
7. All reports submitted pursuant to this CAO shall include the following signed certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.


JOHN H. ROBERTUS
Executive Officer

11/9/04
Date

Date	Work	Hours	Staff
18-Oct-04	Site Inspection	1	ESB
19-Oct-04	Draft NOV & 13267 Letter	8	ESB
20-Oct-04	Draft NOV & 13267 Letter	8	ESB
20-Oct-04	Review NOV & 13267	2	RWM
20-Oct-04	Site Inspection	2.5	CJM
25-Nov-04	Site Meeting & Inspection	1	ESB
25-Nov-04	Site Meeting & Inspection	1	RWM
27-Nov-04	Site Inspection	1	ESB
29-Oct-04	Draft Inspection Report	2	CJM
1-Nov-04	Draft NOV	8	ESB
2-Nov-04	Draft NOV	8	ESB
2-Nov-04	Review NOV	1.5	RWM
5-Nov-04	Draft Cleanup and Abatement Order (CAO)	8	ESB
5-Nov-04	Site Inspection	1	RWM
8-Nov-04	Draft CAO	8	ESB
8-Nov-04	Review CAO	1	MA
9-Nov-04	Draft CAO	6	ESB
9-Nov-04	Review CAO	3	RWM
9-Nov-04	Review CAO	1	MM

Total Hours

72

ESB
RWM
MA
MM
CJM

Eric Becker
Bob Morris
Mark Alpert
Mike McCann
Christopher Means

CLEANUP & ABATEMENT ORDER (CAO) - COST RECOVERY WORKSHEET

Regional Board: San Diego RWQCB - Region 9

Responsible Party: JRMC Real Estate, Inc.

CAO Number: R9-2004-0420

Invoice Amount: \$6,255

Staff Name	Pay Rate Per Hour	Hours Worked	Recoverable Staff Costs
Mark Alpert	\$94	1	\$94
Bob Morris	\$94	8.5	\$799
Mike McCann	\$101	1	\$101
Eric Becker	\$86	57	\$4,874
Christopher Means	\$86	4.5	\$387
		72	\$6,255
		Total Hours	Reimbursement Requested

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



7004 0750 0000 7625 2160
7004 0750 0000 7625 2160

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To James McCann
 Street, Apt. No.,
 or PO Box No. 1040 S. Anderson Dr Ste 200
 City, State, ZIP+4 Escondido CA 92029

PS Form 3800, June 2002

See Reverse for Instructions

PS Form 3800, June 2002

SE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

1. Article Addressed to:

m
Jf Mr James McCann
10 JRMC Real Estate, Inc
Escondido CA 92029

2.

2. Article Number

(Transfer from service label)

PS

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent

☐ Addressee

B. Received by (Printed Name)

JOSEPH B. FOGARTY

C. Date of Delivery

11-13-04

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below ☒ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7004 0750 0000 7625 2160

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540